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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,023	02/21/2002	Jawed Asrar	17396/09057CIP	2905

7590 04/01/2004  
Charles E. Dunlap  
Keenan Building, Third Floor  
1330 Lady Street  
Columbia, SC 29201

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/081,023	<b>Applicant(s)</b> ASRAR ET AL.	
	<b>Examiner</b> Alton N. Pryor	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on 08 January 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) 2,8-17,19-29 and 64-98 is/are pending in the application.
- 4a) Of the above claim(s) 12,14-17,19-22,64-68 and 72-74 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,8-17,19-29,64-98 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

I. Duplicate claim warning will be withdrawn in light of amendment filed 1/8/04.

Examiner agrees that scope of claims 87 and 88 is different.

II. Rejection of claims under 35 USC 112, 2<sup>nd</sup> paragraph will not be maintained in light of amendment filed 1/8/04. The term "pest pressure" is defined clearly by Applicant. See page 10 lines 16-21 of instant specification.

Applicant's arguments filed 1/8/04 have been fully considered but they are not persuasive. See argument and new rejection below.

III. Rejection of claims 2,9-11,13,24-27 under 35 USC 102(b) as being anticipated by Tsuda will be maintained in light of amendment filed 1/8/04 for reasons on record and reasons as follows.

Applicant argues that Tsuda describes a seed treatment with simeconazole for the purpose of protecting the seed and / or plant from fungal pathogens. Applicant states that Tsuda teaches at high dosages treatment with simeconazole protects against soil and air bourne diseases. Applicant also states that Tsuda teaches approximately 10% increase in wheat growth following simeconazole treatment. However, Applicant maintains that Tsuda's focus is the use of simeconazole to protect the plant against fungal disease in which the fungicide is active. Examiner maintains that the fact Tsuda applies the simeconazole to crop seed would inherently lead to enhance yield and vigor of the developing plant. This is confirmed in Tsuda's abstract

Art Unit: 1616

which specifically recites a 10% increase in wheat crop yield following treatment with simeconazole.

Applicant further argues that Tsuda teaches planting simeconazole-treated seeds or growing simeconazole-treated plants, in the presence of fungal plant pathogens against which simeconazole has activity; whereas, the instant invention discloses the planting of treated seed and / or growing treated plants in the absence of fungal plant pathogens. Examiner argues that in the absence of unexpected data both the prior art invention and the instant invention would have been expected to give similar results since both inventions teach the same active step of applying simeconazole to plant / plant propagation material.

IV. Rejection of claims 72 (original claim 42) maintained for reasons on record. See office action dated 9/2/03 for the rejection of claim 42 which applies to new claim 72.

V. Rejection under 35 USC 112, 2<sup>nd</sup> paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2,8-17,19-29 and new claims 64-98 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 2,8-17,19-29,64-98, the term "type" renders the claim indefinite because it is unclear whether the limitation(s) following the term are part of the claimed invention. See MPEP § 2173.05(d). Although many of the claims in the 112, 2<sup>nd</sup>

paragraph rejection are withdrawn as indicated on USPTO form 326, Examiner points out that all pending claims are indefinite.

***Restriction Requirement***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 2,8-17,19-29,64-85,95, drawn to method of increasing the vigor and / or yield of an agronomic plant comprising treating the plant / plant propagation material with a triazole fungicide or strobilurin-type fungicide, classified in class 514, subclasses 383, 407.
- II. Claims 86-94, drawn to an agronomic plant / plant propagation material treated with a triazole fungicide or strobilurin-type fungicide, classified in class 514, subclasses 383, 407.
- III. Claims 96-98, drawn to a formulation comprising a triazole fungicide or strobilurin-type fungicide, classified in class 514, subclasses 383,407.

Inventions I-III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions different modes of operation.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143). Note: Applicant's election of 6/20/03 is maintained.


Art Unit: 1616

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
ALTON N. PRYOR  
Primary Examiner  
AU 1616